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July 13, 1989

The Honorable Lester N. Pearce
State Senator
State Capitol - Senate Wing
Phoenix, AZ 85007

The Honorable James Henderson, Jr.
State Senator
State Capitol - Senate Wing
Phoenix, Arizona 85007

Re: I89-066 (R89-069)
I89-066 (R89-076)

Dear Senators Pearce and Henderson:

You have asked whether the Arizona Court of Appeals or the Arizona Supreme Court must accept jurisdiction of a special action requesting appellate review of matters already decided by those courts on direct appeal in a civil case. We conclude that the decision to not reconsider matters already heard on appeal is within the discretion of the Arizona appellate courts.

Special actions afford a procedure for obtaining relief which was formerly available under A.R.S. §§ 12-2001 to -2007 (certiorari) and A.R.S. §§ 12-2021 to -2029 (mandamus), as well as under the common law writs of certiorari, mandamus, and prohibition. See Note, Rule 1(a), Ariz. R.P. Spec. Action. The grounds for seeking special action relief are set forth in Rule 3, Ariz. R.P. Spec. Actions:

The only questions that may be raised in a special action are:

(a) Whether the defendant has failed to exercise discretion which he has a duty to exercise; or to perform a duty required by law as to which he has no discretion; or

(b) Whether the defendant has proceeded or is threatening to proceed without or in excess of jurisdiction or legal authority; or

(c) Whether a determination was arbitrary and capricious or an abuse of discretion.

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Special action relief is discretionary.

The special action requests extraordinary relief, and acceptance of jurisdiction of a special action is highly discretionary with the court to which the application is made. A plaintiff, in addition to the showing required in all lawsuits that he has standing and that the matter is subject to judicial review, must always carry the burden of persuasion as to discretionary factors. This Rule thus codifies existing practice in Arizona.

Note, Rule 3, Ariz. R. P. Spec. Actions. Consequently, special action relief is not an appeal as a matter of right under Rule 3, Ariz. R.P. Spec. Actions. See Gockley v. Arizona Dept. of Corrections, 151 Ariz. 74, 76, 725 P.2d 1108, 1110 (1986); King v. Superior Court, 138 Ariz. 147, 149, 673 P.2d 787, 789 (1983); Neary v. Frantz, 141 Ariz. 171, 178, 685 P.2d 1323, 1330 (App. 1984).

In civil cases, an appellate decision is final upon filing of an opinion and issuance of a mandate which is filed in the court. Overson v. Martin, 90 Ariz. 151, 152-153, 367 P.2d 203, 205 (1962). Once a decision is final in a civil case, the merits of the lawsuit may not be relitigated by the parties. Gilbert v. Board of Medical Examiners of the State of Arizona, 155 Ariz. 169, 174, 745 P.2d 617, 622 (App. 1987). The reasons for this rule of finality, known as res judicata, are stated as follows:

Public policy demands that there be an end to litigation. The common good of society as a whole and of the litigants in particular, requires that there be an end to strife for the purpose of producing certainty as to individual rights and to promote dignity and respect for judicial proceedings.

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Lee v. Johnson, 70 Ariz. 122, 127, 216 P.2d 722, 725 (1950)
(citations omitted).^{1/}

Consequently, we conclude that the Arizona appellate courts have discretion to refuse to accept jurisdiction of a special action filed pursuant to Rule 3, Ariz. R.P. Spec. Actions, particularly where the special action is filed to relitigate matters already decided by those courts.

Sincerely,

Bob Corbin

BOB CORBIN
Attorney General

BC:CSP:LPF:bl

^{1/}We note that other circumstances, not referred to in your request, may justify a special action in a case already decided by the appellate courts. A special action may be filed after judgement on appeal, for example, to determine whether a trial court is acting in obedience to orders of the appellate court, Civil Rights Division of Arizona Department of Law v. Superior Court of Pima County, 146 Ariz. 419, 423, 706 P.2d 745, 749 (App. 1985), to prevent injustice caused by fraud, imposition on the court or by some mistake of fact, Lindus v. Northern Insurance Co. of New York, 103 Ariz. 160, 162, 438 P.2d 311, 313 (1968), or to correct a civil appellate ruling which is ambiguous or does not express the intent upon which the ruling was based, State Farm Mutual Insurance Co. v. Superior Court for Pima County, 15 Ariz. App. 3, 4, 485 P.2d 593, 594 (1971).